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CITY AND COUNTY OF SAN FRANCISCO
and SFPD CHIEF HEATHER FONG

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLAYTON HARMSTON, an individual; GIGI
GEORGE, an individual; JAMES LEWIS, an
individual; MIKE EVANSON, an individual;
ERIK SOLARES, an individual; DAVE PARRY,
an individual; ANDREW COHEN, an individual;
NOAH MALLINGER, an individual; CARLOS
MUSTAFICH, an individual; LUIS DEJESUS, an
individual; JAMES D. AHERNE, an individual;
JASON KIRCHNER, an individual; REGINALD
SCOTT, an individual; GERALD P. LYONS, an
individual; WENDY HURLEY, an individual;
HOLLY STOUMEN, an individual; CHRISTINE
ARNDT, an individual; SHAREEF NASIR, an
individual,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO,
HEATHER FONG, an individual, and DOES 1-50,

Defendants.

Case No. C 07-01186 SI
Case No. C07-6208 EMC

**DEFENDANTS' REPLY
MEMORANDUM IN SUPPORT OF
THEIR MOTION TO
CONSOLIDATE AND MERGE
CASES**

Date: February 1, 2008
Time: 9:00 a.m.
Courtroom: 10, 19th Floor
Hon. Susan Illston

1 Plaintiffs did not file a brief in response to Defendants' motion to merge and consolidate.
2 Rather, Plaintiffs' opposition to the 12(b)(6) motion Defendants filed in *Cohen-Lewis II* informs
3 Defendants and the Court that "Plaintiffs are not opposing the pending motion by Defendants to
4 consolidate this matter with the *Harmston* litigation." (*Cohen-Lewis* Opp. Mem. at 2:4-5)

5 The Court should consolidate and merge these matters pursuant to FRCP 42(a).
6 Consolidation and merger are proper and should be ordered based on the existence of common
7 questions of law or fact; the savings of time and effort that consolidation and merger will produce;
8 and the fact that the claims asserted in *Cohen-Lewis II* arise out of the same primary right as the
9 claims in this case, such that they may not be separately asserted in that action. *San Remo Hotel v.*
10 *City & County of San Francisco*, 545 U.S. 323, 336 (2005); *Davis v. University of Chicago*, 53 F.3d
11 801, 803 (1995).

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13 Dated: January 16, 2008

14 DENNIS J. HERRERA
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